



The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**



**Thomas S. Burack, Commissioner**

November 23, 2015

Andrew Finlayson  
167 Heald Road  
Wilton, NH 03086

Dear Mr. Finlayson:

Thank you for your letter of November 18 to which you appended a copy of an open letter dated November 2, 2015 from a group calling itself "Stop the Constitution Pipeline" to the Governor of New York and the Commissioner Designate of the New York Department of Environmental Conservation. I appreciate your taking the time to share this information with me.

As you may be aware, in New Hampshire, energy projects, including natural gas pipelines, seeking construction approval are reviewed by the Site Evaluation Committee pursuant to RSA 162-H. Related permitting processes such as Clean Water Act Section 401 Water Quality Certificates are ultimately decided by the Site Evaluation Committee and not by the NH Department of Environmental Services. Accordingly, I have taken the liberty of copying Pam Monroe, the Administrator of the Site Evaluation Committee, on this response and am forwarding to her a copy of your correspondence and attachment.

Again, thank you for your letter.

Sincerely,

Thomas S. Burack  
Commissioner

Cc: Pam Monroe, Administrator, Site Evaluation Committee

NOV 18 2015

**RECEIVED**

Honorable Tom Burack  
DES Commissioner  
PO Box 95  
Concord, NH 03302-0095

November 17, 2015

Dear Commissioner Burack,

I am a resident of Wilton, NH, and I am writing to you in order to bring to your attention an open letter which was recently sent to New York State DEC Commissioner Basil Seggos regarding the DEC's ability to protect the environment of New York in the face of federally approved pipeline construction.

In part, it discusses the DEC's powers in NY and the precedent for such;

"Thus the DEC has many rational reasons for denying the 401 water quality certificate. If such a decision were to be made and then challenged, the Second Circuit Court of Appeals would defer to the DEC. In *Islander East*, a case brought by a pipeline company ten years ago, the Second Circuit held that the Connecticut Department of Environmental Protection had the right to deny a 401 water quality certificate. That decision establishes binding precedent for the review of an interstate pipeline in New York State."

*cf. Islander E. Pipeline Co. v. McCarthy*, 525 F.3d 141, 164 (2d Cir. 2008) (noting that "a single state agency effectively vetoe[d] an energy pipeline that ha[d] secured approval from a host of other federal and state agencies").

It would seem the NH DES would be similarly empowered by the Second Circuit decision to protect our water from ANY gas pipeline application in our state.

Sincerely,

Andrew Finlayson  
167 Heald Road  
Wilton, NH 03086



Stop the Constitution Pipeline  
PO Box 48, East Meredith, New York 13757  
[info@stopthepipeline.org](mailto:info@stopthepipeline.org) | [www.stopthepipeline.org](http://www.stopthepipeline.org)

An open letter to:

Honorable Andrew M. Cuomo  
Governor, New York State  
NYS Capitol Building  
Albany, NY 12224  
[gov.cuomo@chamber.state.ny.us](mailto:gov.cuomo@chamber.state.ny.us)

Honorable Basil Seggos  
DEC Commissioner, Designate  
625 Broadway  
Albany, NY 12233  
[basil.seggos@dec.ny.gov](mailto:basil.seggos@dec.ny.gov)

Via mail and email

November 2, 2015

Dear Governor Cuomo and DEC Commissioner Seggos:

The October 29, 2015 article in Capital New York, *DEC official: State could lose authority if it withholds pipeline decisions*, is filled with errors.<sup>1</sup> Since the paper does not print letters to the editor, this open letter is meant to correct some of the erroneous statements that were made.

Scott Waldman begins by inaccurately stating that “the Cuomo administration has delayed making a final decision on multiple pipelines.” Three pipeline projects are mentioned in the article: the Algonquin Incremental Market (AIM), Northeast Energy Direct (NED), and Constitution (CP). Regarding AIM, the DEC issued notices of complete applications on December 31, 2014, and approved them on May 5, 2015.<sup>2</sup> Accepting public comments and making a decision within four months of a notice cannot be characterized as a delay in decision-making. As for NED, Kinder Morgan has not even filed an application with the Federal Energy Regulatory Commission (FERC) yet. Assuming an application is filed later this fall, DEC’s review of a complete application for NED is not likely to start until 2017. So where’s the delay?

In regards to the proposed Constitution Pipeline, there is nothing arbitrary about the current status of the review process. Under the Clean Water Act, DEC has one year from the date of the

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<sup>1</sup> Scott Waldman, *DEC official: State could lose authority if it withholds pipeline decisions*, CAPITAL NEW YORK (October 29, 2015), available at <http://www.capitalnewyork.com/article/albany/2015/10/8581094/dec-official-state-could-lose-authority-if-it-withholds-pipeline-deci>.

<sup>2</sup> *ENB - Statewide Notices 12/31/2014*, N.Y.S. DEPT OF ENVTL. CONSERVATION (Dec. 24, 2014), [http://www.dec.ny.gov/enb/20141231\\_not3.html](http://www.dec.ny.gov/enb/20141231_not3.html); *ENB - Statewide Notices 5/13/2015*, N.Y.S. DEPT OF ENVTL. CONSERVATION (May 13, 2015), [http://www.dec.ny.gov/enb/20150513\\_not3.html](http://www.dec.ny.gov/enb/20150513_not3.html).

application to make a decision, or waive its rights.<sup>3</sup> The Constitution Pipeline Company, LLC (Company) supplemented its application for the third time in March 2015, and then resubmitted its application in late April 2015.<sup>4</sup> Thus, the DEC has until late April 2016 to make a decision.

Mr. Waldman suggests, based on statements made by Jared Snyder, that the DEC might be acting in an arbitrary manner if it does not act soon. In fact, the exact opposite is true. This past spring, the DEC arbitrarily withheld thousands of pages of the Company's supplemental files when it reopened the public comment period.<sup>5</sup> This fall, the Company supplemented its application for a fourth time. The DEC should release all of this documentation, integrate it into a supplemental EIS if FERC continues to refuse to do so, and reopen the public comment period.

Anyone who has been following this story from the beginning knows that the Company is to blame for the delays it is experiencing, not the DEC or Governor Cuomo. The reason it is taking so long for a final decision to be made is threefold: (1) the Company is proposing to build a massive pipeline where it doesn't belong – in the steep, wet, flood prone, forested hills of the Northwest Catskills and Central New York; (2) FERC issued a draft environmental impact statement in February 2014 even though 24% of the surveys, and many other studies, had not yet been performed; and (3) the company arrogantly assumed that FERC's certificate was the only approval that mattered, and spent the past three and a half years dismissing the concerns of the people of New York State and the requests made by government employees that oversee the laws that protect the environment. Six state and federal agencies stated that FERC's DEIS was incomplete, and the public has yet to see an integrated environmental review for this project, as required by the National Environmental Policy Act and the State Environmental Quality Review Act. Over the past three years, Stop the Pipeline (STP) has documented the substantive and procedural flaws that have occurred throughout this process, and will use this record to support the DEC if it denies the 401 water quality certificate.<sup>6</sup>

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<sup>3</sup> 33 U.S.C. § 1341(a)(1) (2012).

<sup>4</sup> *ENB - Statewide Notices 4/29/2015*, N.Y. ST. DEPT OF ENVTL. CONSERVATION (April 29, 2015), [http://www.dec.ny.gov/enb/20150429\\_reg0.html](http://www.dec.ny.gov/enb/20150429_reg0.html).

<sup>5</sup> Stop the Pipeline, Letter to DEC, 2-36 (July 10, 2015), *available at* [http://elibrary.FERC.gov/idmws/file\\_list.asp?accession\\_num=20150921-5040](http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20150921-5040).

<sup>6</sup> *See* STP, Analysis of responses to agency comments (Dec. 16, 2013), *available at* [http://elibrary.FERC.gov/idmws/file\\_list.asp?accession\\_num=20131217-5017](http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20131217-5017); STP, Comment on DEIS (April 7, 2014), *available at* [http://elibrary.FERC.gov/idmws/file\\_list.asp?accession\\_num=20140408-5088](http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140408-5088); STP, Letter regarding cumulative impacts (July 7, 2014), *available at* [http://elibrary.FERC.gov/idmws/file\\_list.asp?accession\\_num=20140707-5086](http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140707-5086); STP, Letter regarding Army Corps (Oct. 17, 2014), *available at* [http://elibrary.FERC.gov/idmws/file\\_list.asp?accession\\_num=20141017-5152](http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20141017-5152); STP, Request for rehearing (Jan. 2, 2015), *available at* [http://elibrary.FERC.gov/idmws/file\\_list.asp?accession\\_num=20150102-5158](http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20150102-5158); STP, NYSDEC's comments on alternative routes (May 29, 2015), *available at* [http://elibrary.FERC.gov/idmws/file\\_list.asp?accession\\_num=20150529-5195](http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20150529-5195); STP, Comment letter of 59 organizations to Governor Cuomo and DEC Acting Commissioner Gerstman (Aug. 3, 2015), *available at* [http://elibrary.FERC.gov/idmws/file\\_list.asp?accession\\_num=20150803-5079](http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20150803-5079); STP, Comment on need

There is substantial evidence to support the denial of the application for a 401 water quality certificate, so Mr. Snyder was wrong to insinuate that such a denial by the DEC would be improper. This 124-mile long pipeline would cross almost 300 bodies of water, require the cutting and uprooting of 700,000 trees, and traverse over thirty-five miles of steep slopes. Understanding the difficult terrain that would be crossed, and the irreplaceability of the resources it is entrusted to protect, the DEC told the Company over two years ago to bore at least six feet under all streams and wetlands, and to build the pipeline along existing utility corridors.<sup>7</sup> Instead of heeding the agency's request, the Company paid millions of dollars for a geotechnical report that concludes that boring isn't feasible.<sup>8</sup> This document, in and of itself, appears to give the DEC grounds for denying the 401 water quality certificate because trenching through streams and wetlands, many of which flow into the same downstream creek, will degrade the pristine water quality of the region. Since the Company's quick and dirty construction technique is proposed for almost 300 water crossings, the DEC would not be able to certify that the project will comply with NYS water quality standards.

Recent history supports this conclusion. As STP pointed out in its February 27, 2015 comments to the DEC, the last two interstate pipeline projects in New York State provide ample proof that water quality standards will be violated thousands of times if this project proceeds. In fact, because of the location of the proposed pipeline, the speed with which the Company wishes to construct it, and the increased occurrence of extreme storm events in the region, even more catastrophic impacts are likely to occur if this project were to proceed. Thus the DEC has many rational reasons for denying the 401 water quality certificate. If such a decision were to be made, and then challenged, the Second Circuit Court of Appeals would defer to the DEC. In *Islander East*, a case brought by a pipeline company ten years ago, the Second Circuit held that the Connecticut Department of Environmental Protection had the right to deny a 401 water quality certificate.<sup>9</sup> That decision establishes binding precedent for the review of an interstate pipeline in New York State.

Mr. Waldman appears to be taking the Company's side in the article, as he completely ignores the vital role of the public in this process, the problems of proposing to build two new pipelines fifty feet apart along the same route, and the responsibilities of the new DEC Commissioner in the decision-making process. Residents of New York State raised many serious concerns in the 15,000 comments they submitted to the DEC this past spring and summer, and the agency may be rethinking the entire project as a result. Meanwhile, the NED project, which would parallel

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to issue supplemental DEIS (Sept. 18, 2015), *available at* [http://elibrary.FERC.gov/idmws/file\\_list.asp?accession\\_num=20150921-5040](http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20150921-5040).

<sup>7</sup> DEC, Scoping Comments, 3 (Nov. 7, 2012), *available at* [http://elibrary.ferc.gov/idmws/file\\_list.asp?accession\\_num=20121106-5145](http://elibrary.ferc.gov/idmws/file_list.asp?accession_num=20121106-5145); DEC, Comments on Draft Resource reports, 1-2 (May 28, 2013), *available at* [http://elibrary.ferc.gov/idmws/file\\_list.asp?accession\\_num=20130528-5079](http://elibrary.ferc.gov/idmws/file_list.asp?accession_num=20130528-5079); DEC, Comments (Sept. 25, 2013), *available at* [http://elibrary.ferc.gov/idmws/file\\_list.asp?accession\\_num=20130925-5052](http://elibrary.ferc.gov/idmws/file_list.asp?accession_num=20130925-5052).

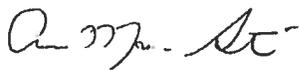
<sup>8</sup> Constitution Pipeline Company, LLC, Trenchless Feasibility Report (March 2015), *available at* <http://dec.stopthepipeline.org/background-information/cp-trenchless-feasibility-report/>.

<sup>9</sup> *Islander E. Pipeline Co., LLC v. McCarthy*, 525 F.3d 141, 164 (2d Cir. 2008).

this pipeline along most of the route in New York State, is advancing. However, the cumulative impacts of two pipelines on water quality standards were never adequately studied in FERC's DEIS or FEIS, or the Company's joint application to the DEC. In addition, Basil Seggos, the designated new DEC Commissioner, needs to review this material before he can determine whether or not the proposed project will comply with New York State's strict water quality standards. It will take time for him to make findings in such a complex matter. Under the clear terms of the Clean Water Act, he has until late April 2016 to decide.

As we all know, corporations think political influence is just fine when they are the ones exerting it. What is happening in this situation is that the citizens of New York State are demanding that state and federal laws be followed. They know that if the Company is allowed to rip open the earth in the forested mountains of the Northwest Catskills and Central New York that the next flood will be even more devastating than the last three have been. The Clean Water Act exists to protect our most precious resource from degradation, and we expect the DEC to do its job by denying the 401 water quality certificate for this ill-conceived project.

Sincerely,



Anne Marie Garti, Esq.  
Founding member of STP  
Volunteer attorney at the Pace Environmental Litigation Clinic, which represents STP

C: Patricia Desnoyers, DEC  
Jared Snyder, Assistant Commissioner, DEC, Air Resources, Climate Change and Energy  
Scott Waldman, Capital New York